

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

Abbott Laboratories

6765 South Ridge Road
Wichita, Kansas 67277

RCRA I.D. No. KSD981495567

Respondent.

Proceeding under Section 3008(h)(2) of
the Resource Conservation and Recovery
Act as amended, 42 U.S.C. § 6928(h)(2)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2008-0006

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Abbott Laboratories (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders; and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2).



II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Section 3008(h)(2) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. § 6928(h)(2), and in accordance with the Consolidated Rules of Practice.

2. This Consent Agreement and Final Order (CAFO) serves as notice that the Environmental Protection Agency has reason to believe that Respondent violated an order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

Parties

3. The Complainant is the Chief of the RCRA Enforcement and State Programs Branch in the Air and Waste Management Division of EPA, Region 7, as duly delegated from the Administrator of EPA.

4. The Respondent is Abbott Laboratories (Abbott), a company incorporated under the laws of Illinois and licensed to do business in the state of Kansas (the state).

Statutory and Regulatory Framework

5. The state has not been granted authorization to administer and enforce the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA), which include the authorization to issue orders requiring corrective action pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). Therefore, EPA is authorized to directly enforce the provisions of Section 3008(h) of RCRA in the state of Kansas. When EPA determines that any person has failed to

comply with the requirements of an Order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), EPA may assess penalties for violation of any such Order.

6. Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), authorizes a civil penalty of not more than \$25,000 per day for violations of orders issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are now authorized for failure to comply with such Orders, if such failure takes place after March 15, 2004.

Factual Allegations

7. Respondent is an Illinois corporation authorized to conduct business in the state of Kansas and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

8. Respondent, located at 6765 South Ridge Road in Wichita, Kansas, 67277, was in operation from approximately 1965 until 1985, producing various chemicals used to manufacture artificial sweeteners, textiles, rubber, plastics, adhesives and other products.

9. As a result of these activities, Respondent produced various solid and hazardous wastes within the meaning of 40 C.F.R. Part 260 and Part 261. Once a waste is classified as a hazardous waste, it is assigned a waste code pursuant to these regulations. In 1980, Respondent filed a notification of hazardous waste activity pursuant to Section 3010 of RCRA, 42 U.S.C. § 6910. According to this notification, Respondent generated hazardous wastes bearing the following hazardous waste codes: F003, F005, P053, P069, U009, U012, U057, U074, U092, U110, U112, U123, U154, U159, U168, U194, U196, U220, D001 and D002.

10. The operational portion of the facility was sold to Air Products and Chemicals, Inc. in 1985; however, Abbott retained ownership of some of the former solid waste management units (SWMUs) at the facility, including the hazardous waste container storage area, the evaporation pond, the evaporation lagoon and the injection well.

11. Respondent updated its hazardous waste notification in 1986, after the sale of the operational portions of the facility. The updated notification indicated that Respondent operated a hazardous waste storage facility and generated wastes bearing the hazardous waste codes F003, F005 and D001.

12. Various investigations by the Kansas Department of Health and Environment (KDHE), EPA and Respondent showed that there had been releases of hazardous waste and hazardous waste constituents from the SWMUs at the facility that were owned by Respondent.

13. In 2002, Complainant and Respondent entered into an Administrative Order on Consent (AOC) pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h), Docket No. RCRA-07-2002-0130. The order was filed with the Regional Hearing Clerk of EPA Region 7 on June 28, 2002, and required the Respondent to conduct corrective action investigation and cleanup activities at the facility.

Alleged Violations

14. Complainant hereby incorporates the allegations contained in paragraphs 1 through 13 above, as if fully set forth herein.

15. Section XXVI of the AOC required Abbott to submit documentation of financial assurances necessary to complete the work under the AOC.

16. Abbott submitted documentation demonstrating its ability to complete environmental cleanup projects in various locations in other states; however, Abbott failed to submit site-specific cost estimates for completion of the work under the AOC and site-specific documentation of financial assurances for completion of the work at the Wichita facility as required by the AOC.

17. After various communications between EPA and Abbott regarding the deficiencies in the financial assurance documentation, Abbott sent EPA updated documentation of financial assurances. However, the updated documentation still did not include site-specific cost estimates or a discussion of a site-specific financial assurance mechanism for completion of the work. In May 2007, Abbott submitted documentation that complied with applicable regulatory requirements and with the AOC.

18. Abbott's failure to submit financial assurances which complied with the requirements of the AOC is a violation of an Order issued pursuant to Section 3008(h) of RCRA, 42 U.S.C. § 6928(h).

CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

2. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

4. Respondent waives its right to contest the allegations and its right to appeal the proposed Final Order portion of the CAFO.

5. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

6. This CAFO only resolves Respondent's liability for Federal civil penalties for the violations alleged in this CAFO. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

7. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

9. Respondent agrees that, in settlement of the claims alleged in this CAFO, Respondent shall pay a penalty of \$25,033.00 set forth in Paragraph 1 of the Final Order.

10. Respondent understands that failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the applicable statutory rate.

11. This CAFO shall be effective upon entry of the Final Order by the Regional Judicial Officer for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

FINAL ORDER

Pursuant to the authority of Section 3008(h)(2) of RCRA, 42 U.S.C. § 6928(h)(2), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Payment of Civil Penalty

1. Within thirty (30) days of the effective date of this CAFO, Respondent will pay a civil penalty of \$25,033.00.

2. Payment of the penalty shall be by cashier or certified check made payable to "Treasurer of the United States," or by electronic transfer, and remitted to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York NY 10045
Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency

The Respondent shall reference the Docket Number on the check or other transmission. A copy of the check or transmission shall also be mailed to:

Regional Hearing Clerk
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Elizabeth Koesterer
Environmental Engineer
AWMD/RESP
901 North 5th Street
Kansas City, Kansas 66101

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

C. Parties Bound

4. This Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns.

D. Reservation of Rights

5. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed Thirty-two Thousand Five Hundred Dollars (\$32,500) per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law.

6. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

7. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or

equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

8. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

9. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

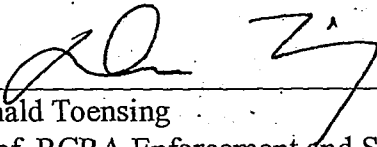
10. The requirements of this CAFO shall be deemed satisfied upon EPA's receipt of the funds from Respondent's payment of the penalty required under this Final Order; and the CAFO will terminate upon written notice by Complainant that Respondent has fully implemented the actions required in the Final Order.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY

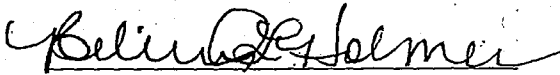
9-11-08

Date


Donald Toensing
Chief, RCRA Enforcement and State Programs Branch
Air and Waste Management Division
U.S. Environmental Protection Agency
Region 7

9/11/08

Date



Belinda L. Holmes
Senior Counsel
U.S. Environmental Protection Agency
Region 7

RESPONDENT:

ABBOTT LABORATORIES

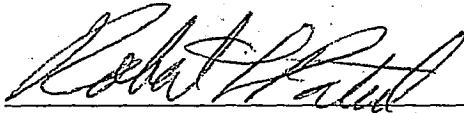
9/4/08

Date


Robert D. Morrison, Vice President
Global Environmental, Health and Safety
Abbott Laboratories

IT IS SO ORDERED. This Final Order shall become effective immediately.

September 16, 2008
Date


Robert Patrick
Regional Judicial Officer

IN THE MATTER OF Abbott Laboratories, Respondent
Docket No. RCRA-07-2008-0006

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

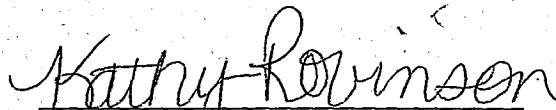
Copy hand delivered to
Attorney for Complainant:

Belinda L. Holmes
Senior Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Steve Ziesmann, Senior Counsel
Legal Regulatory & Compliance
Abbott Laboratories, Inc.
100 Abbott Park Road, AP6A-2, 32RA
Abbott Park, Illinois 60064

Dated: 9/18/08


Kathy Robinson
Hearing Clerk, Region 7